IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO.657 OF 2007
IN
ADMIRALTY SUIT NO.25 OF 2001

B.P.Petrolleri Anonim Sirketi ...Plaintiff
vs.
M.V.Lima I
Lima Shipping & Trading Co.Inc.
Angsley Investments Limited ...Defendants

WITH
CHAMBER SUMMONS NO.440 OF 2007
IN
ADMIRALTY SUIT NO.2 OF 2002

Castrik Nuddke East Ltd. ...Plaintiff
vs.
M.V.Lima II & Others ...Defendants

Mr.Pradeep Sancheti with Mr.Uday Bhanusingh i/b M/s.Dhru & Co.for the Plaintiff
Mr.Munir Merchant for the Defendant No.3.

CORAM: A.S.OKA,J.
DATE : OCTOBER 1,2007

P.C.:

1. Heard the learned counsel for the parties. The chamber summonses have been taken out by the plaintiff in Admiralty suit No.25 of 2007 and suit No.2 of 2003.

2. The prayer made in the chamber summons No.657 of 2007 is for allowing the plaintiff to reopen the evidence for a limited purpose of tendering in evidence the certificates dated 5th June 2003 issued by Istanbul Ship Registry,Istanbul,Turkey. Prayer (a) of the said chamber summons reads thus :

(a) that this Hon’ble Court be pleased to allow the Plaintiff to reopen the evidence for the limited purpose of

tendering in evidence

(i) the certificates dated 5th June 2003 issued by the Istanbul Ship Registry, Istanbul, Turkey in Turkish language regarding registration of vessels M.V. Lima I and Lima II and also the translation thereof in English language as copies of public documents issued pursuant to the letter of request issued by the Prothonotary & Senior Master, High Court, Bombay pursuant to the order dated 5th March 2003 by this Hon'ble Court in Admiralty Suit No.2 of 2002.

(ii) the Affidavit dated 29th July 2004 made by one Mr.Mohamed Ali Baig annexing thereto as Exh.C1 and C2 the English translation of the certificates dated 5th June 2003 issued by the Istanbul Ship Registry, Istanbul, Turkey made pursuant to the order dated 30th June 2004 passed by this Court in Admiralty Suit No.2 of 2002 together with further Affidavit dated 1st July 2006 made by the said Shri Mohamed Ali Baig correcting the date of aforesaid certificate mentioned in paragraph 5 of the said Affidavit dated 29th June 2004.

There are similar prayers in the chamber summons No.440 of 2007 taken out in Admiralty Suit No.2 of 2002.

3. The learned counsel for the plaintiff in support of the chamber summons submitted that the production of the said documents is necessary to prove the ownership of the vessels subject matter of the suit. He pointed out that an order was passed by this court for issuing a letter of request to Istanbul Ship Registry,Istanbul, Turkey to issue relevant extracts of the documents. It is stated that on the basis of the said letter, on 5th June 2003, Istanbul Ship Registry,Istanbul, Turkey issued a certified true copies of extracts of the records maintained by the said registry in respect of the vessels in question. He pointed out that the certificates issued by the Istanbul Ship Registry,Istanbul,Turkey has been certified by the Notary Public practising in Turkey. The said certificates and the certificate of the Notary Public in Turkish language together with English translations thereof have been certified as true copies by the Indian Diplomatic agent of the Indian High Commission in Turkey. He pointed out that by the Judges order dated 30th June 2004 passed by this court, one Mr.Mohamed Ali Baig, a Turkish Interpreter was authorised to translate and certify the Turkish extracts in respect of the vessels is question received from Istanbul Ship Registry. He pointed out that accordingly Mr.Mohamed Ali Baig translated the documents and has furnished the translation. He stated that the affidavit dated 29th July 2004 by the said Mohamed Ali Baig and his further affidavit dated 1st July 2006 rectifying the mistake in stating the date of the certificate issued by the

Turkish Registry are also required to be produced on record. It is stated that on 5th March 2007, the aforesaid documents have been filed by the plaintiffs with the Registry. It is stated that the said certified documents/certificates issued by the Istanbul Ship Registry,Istanbul,Turkey were annexed to the affidavit dated 26th October 2003 in support of the notice of motion No.2071 of 2003 and the Advocate for the first Respondent has inspected the said documents. He submitted that the certificates are Public documents within the meaning of Indian Evidence Act,1872 and therefore, the plaintiffs may be permitted to produce the said documents as certified copies of public documents.

4. The learned counsel for the third defendant submitted that recording of evidence of the witnesses in the suit has been completed long back and the present chamber summons has been belatedly taken out. He submitted that earlier chamber summons taken out by the plaintiffs for the same relief has been rejected by this court and hence this chamber summons deserves to be rejected. He submitted that the the plaintiffs cannot be allowed to produce the said documents at this stage.

5. I have carefully considered the submissions made by the learned counsel for the parties.

6. By Judges order dated 5th March 2003, this court directed the Prothonotary and Senior Master to issue a letter of

request to the Istanbul Ship Registry,Istanbul,Turkey to produce the extracts of the Register. There is a further order dated 30th June 2004 by which this court appointed Shri Mohamed Ali Baig, a Turkish Interpreter to translate and certify the Turkish extracts received by the Plaintiff from the Istanbul Ship Registry, Turkey in respect of two vessels and the various rubber stamps appearing thereon as well as on the English translation thereof. The Plaintiffs are seeking production of the said certificates dated 5th June 2003 and the translation thereof which was furnished on the basis of the order dated 30th June 2004 passed by this court. The affidavits of Mr. Mohamed Ali Baig dated 29th July 2004 and 1st July 2006 are sought to be produced.

7. The first prayer is for allowing the production of certificates dated 5th June 2003 and the English translation thereof. The second prayer is for permitting the production of the the aforesaid affidavits of the translator. On a query made by this court, the learned counsel for the third defendant stated that the said defendant was not accepting the correctness of the translation made by Mr.Mohamed Ali Baig. The submission for the learned counsel for the plaintiffs is that the translation has been made by the said translator on the basis of a direction issued by this Court by order dated 30th June 2004. He submitted that under the various orders passed by this court the same translator has been appointed as a translator of Turkish documents by this court and therefore,

the translation has to be accepted as true and correct.

8. This court by order dated 30th June 2004 directed Shri Mohamed Ali Baig, a Turkish Interpreter to translate the Turkish documents. The plaintiffs desire to produce certificates dated 2nd June 2003 in Turkish language as the certified copies of public documents. Therefore, English translation of the said certificates will have to be read for ascertaining whether the documents are in the nature of public documents. Unless it is proved that the translation of the said documents in English is a true and correct translation or unless the contesting defendants admit the correctness of the translation, the same cannot be read by this court as the correct translation of the documents in Turkish language.

9. The learned counsel for the 3rd Defendant states that he is not admitting the correctness of the translation. The order dated 30th June 2004 passed by this court does not lay down that the translation made by the said Shri Mohamed Ali Baig will be treated as the correct or official translation. Considering the fact that the documents have been produced on the basis of the letter of request issued by this court, the production of documents will have to be allowed. The question whether the documents are admissible in evidence as certified copies of the public documents will have to be decided only after the translations of the said documents made by Mr.Mohamed Ali Baig is established to be a true and correct

translations.

10. The second prayer is for seeking production of affidavits dated 29th July 2004 and affidavit dated 1st July 2006 of Mr.Mohamed. Ali Baig. In view of section 1 of Indian Evidence Act,1872, the said Act is not applicable to the affidavits. The learned counsel for the plaintiffs submits that he may be permitted to produce the said affidavits of the translator as the affidavits in lieu of examination-in-chief of the translator and a permission may be granted to examine the translator as a witness. The said prayer deserves to be granted.

11. Hence, I pass the following order in both the matters :

. The plaintiffs are permitted to produce certificates dated 5th June 2003 issued by Istanbul Ship Registry,Istanbul, Turkey and the translation thereof in English. The plaintiffs are permitted to file affidavits dated 29th July 2004 and 1st July 2006 of Mr.Mohamed Ali Baig as affidavits in lieu of evidence and the Plaintiffs are permitted to examine the said witness by reopening the evidence. The issue whether the documents are certified copies of the public documents will be examined only after the translations are proved to be true translations.

. The learned counsel for the defendants prays for stay of

operation of this order. The prayer is opposed by the learned counsel appearing for the plaintiffs. The operation of the order will remain stayed for a period of four weeks from today. The suit shall be listed for directions on 31st October 2007.

JUDGE